

UNITED STATES OF AMERICA

Plaintiff,

v.

AK STEEL CORPORATION

Defendant.

Civil Action No.

CONSENT DECREE

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UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA)	
)	
Plaintiff,)	
)	Civil Action No.
v.)	
)	
AK STEEL CORPORATION)	
)	
Defendant.)	

CONSENT DECREE

WHEREAS, Plaintiff, the United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), has filed, simultaneously with this Consent Decree, a civil Complaint against Defendant, AK Steel Corporation ("Defendant" or "AK Steel"), in this matter which alleges that Defendant violated the Clean Water Act, as amended, 33 U.S.C.

§§ 1251 - 1387 ("CWA"); the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. §§ 6921 - 6939e ("RCRA"); and the Clean Air Act, as amended, 42 U.S.C. §§ 7401 - 7671q ("CAA"), at its plant located at One Armco Drive, Butler, Pennsylvania ("Facility");

WHEREAS, the EPA has worked jointly with AK Steel to resolve the violations alleged in the Complaint;

WHEREAS, pursuant to the authorities of Section 309(b) of the CWA, 33 U.S.C. § 1319(b); Section 3008(a) of RCRA, 42 U.S.C. § 6928(a); and Section 113(b) of the CAA, 42

U.S.C. § 7413(b), the Complaint seeks the imposition of civil penalties for alleged violations of the CWA, RCRA, and CAA;

WHEREAS, in furtherance of both judicial efficiency and the public interest, the parties hereto have agreed to enter into a Consent Decree to resolve the violations of the CWA, RCRA and CAA alleged in the Complaint; and

WHEREAS, the parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the parties in good faith and will avoid prolonged and complicated litigation among the parties; and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before taking any testimony; upon the pleadings; without adjudication of any issue of fact or law; without this Consent Decree constituting any evidence, waiver or admission of fact, violation or liability by any party; and with the consent of the parties, it is hereby ORDERED and DECREED as follows:

I. JURISDICTION AND VENUE

1. Jurisdiction is vested in this Court pursuant to Section 309(b) and (d) of the CWA, 33 U.S.C. § 1319(b), (d); Section 3008(a) of RCRA, 42 U.S.C. § 6928(a); Section 113(b) of the CAA, 42 U.S.C. § 7413(b); and 28 U.S.C. §§ 1331, 1345, and 1355.
2. Venue is proper in this judicial district pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b); Section 3008(a) of RCRA, 42 U.S.C. § 6928(a); Section 113(b) of the CAA, 42 U.S.C. § 7413(b); and 28 U.S.C. §§ 1355 and 1391(b).

II. PARTIES BOUND

3. The provisions of this Consent Decree shall apply to and be binding upon Plaintiff and upon Defendant, including Defendant's officers, directors, employees, agents, servants, and successors and assigns, and all persons, firms, entities and corporations acting under, through or for it or in active concert or participation with it. Defendant shall be responsible for the acts of any of its officers, directors, employees, agents, servants, successors, assigns, contractors, and consultants, which violate or cause Defendant to violate the terms hereof.
4. The undersigned representative(s) of Defendant and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice each certifies that he or she is fully authorized to execute this Consent Decree and to legally bind the party whom he or she represents to this Consent Decree.
5. No change in ownership or corporate status shall in any way alter Defendant's responsibilities under this Consent Decree. In the event of any conveyance of title, easement, or other interest in the Facility (as defined in Section III of this Consent Decree), all of Defendant's obligations under this Consent Decree shall continue to be met by Defendant.
6. In the event that Defendant proposes to sell or transfer the real property or operations subject to this Consent Decree, Defendant shall give written notification to EPA and the United States Department of Justice, in accordance with Section V of this Consent Decree (Submission of Documents), of such purchaser or transferee in interest at least thirty (30) days prior to the sale or transfer. At least thirty (30) days prior to any such

conveyance, Defendant shall also provide a copy of this Consent Decree to any person or entity to whom Defendant intends to make such conveyance, and shall condition such sale or transfer upon agreement by the purchaser or transferee to be subject to the obligations under this Consent Decree and to submit to the jurisdiction of this Court.

7. Defendant shall notify each contractor retained to perform work for the Supplemental Environmental Projects required by the Consent Decree of each of the requirements of this Consent Decree relevant to the activities to be performed by the contractor, including all work schedules and reporting deadlines relevant to the work to be performed by the contractor. Defendant shall further require that each such contractor notify each of its subcontractors retained to perform the compliance demonstration and monitoring work required by this Consent Decree of the requirements of this Consent Decree applicable to the work to be performed by such subcontractor. In any action or proceeding to enforce this Consent Decree, Defendant shall not raise as a defense the failure by any of its agents, servants, contractors, subcontractors or employees to take actions necessary to comply with the Consent Decree, except where such failure is the result of circumstances that meet the criteria of Section VIII (Force Majeure) of this Consent Decree.

III. DEFINITIONS

8. Unless otherwise stated, terms used in this Consent Decree shall have the meaning given to those terms in the CWA, RCRA, and CAA and their implementing regulations.
9. "Day" as used in this Consent Decree shall mean calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working

day. Working day means a day other than a Saturday, Sunday, or Federal holiday.

10. "Defendant" means AK Steel Corporation.
11. "EPA" means the United States Environmental Protection Agency and any successor agencies or departments.
12. "Facility" means the steel production facility owned and/or operated by Defendant and located at One Armco Drive, Butler, Pennsylvania.
13. "Plaintiff" means the United States of America, on behalf of EPA.
14. "Work" means any compliance, reporting, recordkeeping, or other activity Defendant is required to perform under this Consent Decree.

IV. SUPPLEMENTAL ENVIRONMENTAL PROJECTS

15. Defendant shall implement the three (3) supplemental environmental projects ("SEPs") listed below in accordance with EPA's May 1, 1998, EPA Supplemental Environmental Projects Policy (the "SEP Policy"), which the parties agree are intended to secure significant environmental or public health protection and improvements. Each SEP is listed below and more fully described in the scope of work (hereinafter "Scope of Work"), attached hereto as Exhibit 1 and incorporated herein by reference:
 - a. Refrigerant Conversion SEP.
 - b. Nitrogen Oxides Emission Reduction Credit Retirement SEP.
 - c. Refrigerant Recycling Program for Butler County SEP.
16. Performance of the SEPs shall not be construed as prohibiting, altering or in any way limiting EPA's authority to enforce any applicable environmental requirements at Defendant's facilities, or Defendant's duty to comply with such requirements.

17. The total expenditure for the SEPs shall be in accordance with the specifications set forth in the Scope of Work and shall be not less than the following: Refrigerant Conversion SEP-\$645,000; Nitrogen Oxides Emission Reduction Credit Retirement SEP-\$225,000; and Refrigerant Recycling Program in Butler County SEP-\$30,000. Defendant shall include documentation of the expenditures made in connection with each SEP as part of the SEP Completion Report. Provided, however, that in the event Defendant spends less on a particular SEP than the amount set forth above, EPA may elect, in its unreviewable discretion, not to assess stipulated penalties pursuant to Paragraph 30.a.iii of this Consent Decree and instead allow Defendant to allocate the monetary shortfall into one of the other SEPs set forth in this Consent Decree.
18. Defendant hereby certifies that, as of the date of this Consent Decree, Defendant is not required to perform or develop any of the SEPs by any federal, state or local law or regulation; nor is Defendant required to perform or develop any of the SEPs by any other agreement, grant or as injunctive relief in this or any other case. Defendant further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for any of the SEPs. In addition, Defendant certifies that none of the SEPs had been started by Defendant, or funds committed thereto by Defendant, prior to the commencement of settlement discussions in this matter, and that all projects are being performed in settlement of this litigation.
19. SEP Reports.
- a. Completion Report. Defendant shall submit SEP Completion Reports to EPA within sixty (60) days after each of the SEPs described in Paragraph 15.a., 15.b.,

and 15.c. have been completed. Each SEP Completion Report shall contain the following information:

- (i) A detailed description of the SEP as implemented, including a description of any deviations from the Scope of Work for the SEP, and, if deviations were necessary, a description of any operating problems encountered and the solutions thereto;
- (ii) Itemized costs for the SEP;
- (iii) Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Decree;
- (iv) A description of the environmental and public health benefits resulting from implementation of the SEPs; and
- (v) A quantification of the direct and indirect benefits of pollutant reductions of the SEP.

b. Periodic Reports. Defendant shall submit any additional reports required by the Scope of Work to EPA in accordance with the schedule and requirements recited therein.

c. Defendant agrees that failure to submit the SEP Completion Report or any Periodic Report required by Paragraph 19 a. or b. above shall be deemed a violation of this Consent Decree and Defendant shall become liable for stipulated penalties pursuant to Paragraph 30 below.

d. Defendant shall submit all notices and reports required by this Consent Decree in accordance with Paragraph 24.

e. In itemizing its costs in the SEP Completion Report, Defendant shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that

specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Cancelled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

20. Defendant shall maintain legible copies of documentation of the underlying research and data for any and all documents or reports submitted to EPA pursuant to this Consent Decree and shall provide the documentation of any such underlying research and data to EPA not more than twenty (20) days after Defendant's receipt of a request for such information. In all reports that are to be submitted by Defendant under Paragraph 19, Defendant shall have a responsible corporate officer or, if specifically designated by Defendant for this purpose, the plant manager of AK Steel's Butler Works, certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

I certify under penalty of law that the information contained in and accompanying this document is true, accurate, and complete. With respect to any portions of this document and its attachments for which I cannot personally verify truth and accuracy, I certify that such portions were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signature: _____
Name: _____
Title: _____

For purposes of this Consent Decree, “responsible corporate officer” shall mean a president, secretary, treasurer, or vice-president of the corporation in charge of the principal business function, or any other person who performs similar policy- or decision-making functions for the corporation.

21. EPA Review of SEP Completion Report.

- a. After receipt of a SEP Completion Report pursuant to Paragraph 19 above, EPA shall provide Defendant with one of the following: i) a written Notice of Deficiency specifying any deficiencies in the SEP Completion Report and a grant of sixty (60) days in which Defendant may correct such deficiencies and resubmit the revised SEP Completion Report; ii) a written Notice of SEP Completion in which EPA concludes that the SEP has been completed satisfactorily; or iii) a written Notice of SEP Noncompletion in which EPA concludes that the SEP has not been completed satisfactorily.
- b. If EPA elects to exercise either option i) or iii) above, EPA shall permit Defendant the opportunity to object in writing to the notice given pursuant to Paragraph 21.a. within twenty (20) days of receipt of such notice. EPA and Defendant shall then have an additional thirty (30) days from the receipt by EPA of the objection to reach agreement on changes necessary. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision on adequacy of the completion of the SEP to Defendant, which decision shall be final and binding upon Defendant unless Defendant invokes Dispute Resolution in accordance with Section IX. In the

event any one of the SEPs is not completed as contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Defendant to EPA in accordance with Section VII.

22. Any public statement, oral or written, made by Defendant making reference to any of the SEPs shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken on behalf of the U.S. Environmental Protection Agency under the Clean Water Act, the Resource Conservation and Recovery Act, and the Clean Air Act."
23. Defendant agrees that it will not seek or take any tax deduction for any expenditure it makes in implementing the SEPs, notwithstanding whether such expenditure may otherwise be deductible under federal, state, or local law, nor will Defendant either seek or take any other tax advantage for SEP expenditures that may otherwise be available under federal, state, or local law.

V. SUBMISSION OF DOCUMENTS

24. Unless and until written notice to the contrary is provided to Defendant, all notifications, reports and information required by this Consent Decree to be submitted shall be submitted to:

Samantha P. Fairchild, Director (3EC00)
Office of Enforcement, Compliance and Environmental Justice
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103

with copies submitted simultaneously to:

Daniel L. Isales (3EC10)
U.S. Environmental Protection Agency
Environmental Science Center
701 Mapes Road
Fort Meade, MD 20755-5350

and

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044.
DOJ # 90-7-1-07684

25. Any and all notifications, reports, and information required by this Consent Decree to be submitted, as to Defendant, shall be submitted to:

Russell Dudek
AK Steel Corporation
P.O. Box 832
Butler, PA 16003-0832

Carl A. Batliner
AK Steel Corporation
703 Curtis Street
Middletown, OH 45043

David C. Horn, Esq.
AK Steel Corporation
703 Curtis Street
Middletown, OH 45043

26. Notifications, reports or other documents submitted by Defendant to EPA and the United States shall be deemed submitted on the date they are either: (1) postmarked and sent by certified mail, return receipt requested; (2) sent by facsimile transmission, with confirmation of receipt; or (3) sent by overnight delivery service.

VI. CIVIL PENALTY

27. Within sixty (60) calendar days after the entry of this Consent Decree as determined by Paragraph 60 Defendant shall pay a total civil penalty of \$300,000.00 in settlement of the civil violations alleged by the United States in its Complaint. Defendant shall pay the United States the \$300,000.00 civil penalty payment by Electronic Funds Transfer (“EFT”) to the United States Department of Justice lockbox bank, referencing the civil action number, DOJ case number (90-7-1-07684). Payment shall be made in accordance with the EFT instructions provided by the U.S. Attorney’s Office. Any EFT received at the United States Department of Justice lockbox after 3:00 p.m. (Eastern Time) will be credited on the next business day. Defendant shall simultaneously deliver copies of its EFT transmittal notice to “Docket Clerk (3RC00), Region III, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103-2029”; and to “Chief, Environmental Enforcement Section, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044, Attn: DOJ No. 90-7-1-07684.”
28. If Defendant fails to make timely payment to the United States of the civil penalty set forth in Paragraph 27, above, it shall be liable to the United States for interest on the late payment as provided for at 28 U.S.C. § 1961.
29. Any payment made pursuant to Paragraph 27 of this Consent Decree is a penalty within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), and is not a tax deductible expenditure for purposes of federal, state, or local law. Neither Defendant nor any of its parent or affiliated corporations shall deduct Defendant’s payment of the civil penalty provided for herein for any tax purpose or otherwise obtain

favorable tax treatment of such civil penalty payment.

VII. STIPULATED PENALTIES

30. a. In the event that Defendant fails to comply with any of the terms or provisions of this Consent Decree relating to the performance of the SEPs described in Exhibit 1 hereto and/or to the extent that actual expenditures for the SEP do not equal or exceed the costs for each SEP described herein and in Exhibit 1 hereto, Defendant shall be liable for stipulated penalties according to the provisions set forth below:

- i) Except as provided in subparagraph ii) immediately below, for a SEP which has not been completed satisfactorily pursuant to this Consent Decree, Defendant shall pay a stipulated penalty to the United States in the following amounts:

For the Refrigerant Conversion SEP-\$645,000;
For the Nitrogen Oxides Emission Reduction Credit SEP-\$225,000; and
For the Refrigerant Recycling Program for Butler County SEP-\$30,000.
- ii) If a SEP is not completed in accordance with this Consent Decree, but the Defendant made good faith and timely efforts to complete the project and certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, Defendant shall not be liable for any stipulated penalty. The provisions of this subsection shall not apply to the Nitrogen Oxides Emission Reduction Credit SEP.
- iii) If a SEP is completed in accordance with this Consent Decree, but Defendant spent less than 90 percent of the amount of money required to be spent for the project, Defendant shall pay a stipulated penalty to the United States in the following amounts:

For the Refrigerant Conversion SEP-\$97,000;
For the Nitrogen Oxides Emission Reduction Credit SEP-\$34,000; and
For the Refrigerant Recycling Program for Butler County SEP-\$5,000.
- iv) If a SEP is completed in accordance with this Consent Decree and the Defendant spent at least 90 percent of the amount of money required to be

spent for the project, Defendant shall not be liable for any stipulated penalty.

- v) For failure to submit the SEP Completion Report required by Paragraph 19.a. above, Defendant shall pay a stipulated penalty for each day after the report was originally due until the report is submitted: for days one (1) through five (5), a penalty of \$500 per day, and for every day thereafter a penalty of \$1,000.
- vi) For failure to submit any other report required by Paragraph 19.b. above, Defendant shall pay a stipulated penalty in the amount for each day after the report was originally due until the report is submitted: for days one (1) through five (5), a penalty of \$500 per day, and for every day thereafter a penalty of \$1,000.
- vii) For failure to make timely payment of the civil penalty required by Paragraph 27, Defendant shall pay a stipulated penalty in the amount of \$1,000 for each day after the payment was due until complete payment is submitted.

b. The determination of whether a SEP has been satisfactorily completed and whether the Defendant has made a good faith, timely effort to implement a SEP shall be in the discretion of EPA, subject to the procedures set forth in Paragraph 21.b.

c. Stipulated penalties for subparagraphs v) and vi) above shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity.

31. Stipulated penalties shall be paid to the United States as provided for in Paragraph 27 of this Consent Decree, within twenty (20) days of Defendant's receipt of a written demand for stipulated penalties from Plaintiff that describes the basis for the demand, unless Defendant invokes the dispute resolution procedures of Section IX of this Consent Decree. To the extent that Defendant invokes dispute resolution regarding the stipulated

penalties and does not prevail, it shall pay accrued penalties, including those accruing during the dispute resolution, plus interest calculated in accordance with Paragraph 36 of this Consent Decree within twenty (20) days after resolution of the dispute. In the event Defendant fails to pay stipulated penalties when due, it shall be liable for interest and penalties for late payment in accordance with the provisions of Paragraph 36.

32. Any dispute with respect to liability for a stipulated penalty shall be resolved in accordance with Section IX (Dispute Resolution) of this Consent Decree. Defendant shall bear the burden of proving that it is not subject to stipulated penalties.
33. Stipulated penalties shall not be the exclusive civil remedy of Plaintiff for Defendant's violations of this Consent Decree, and Plaintiff reserves the right to use any remedies to which it is entitled, including, but not limited to, civil penalties, injunctive relief and contempt for Defendant's failure to comply with any provisions of this Consent Decree or other provisions of law.
34. Except as provided in Paragraph 53 (Covenant Not To Sue), and in Section VII (Stipulated Penalties), nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the rights of the Plaintiff to seek additional remedies or sanctions, pursuant to other provisions of this Consent Decree or of any applicable statutes and regulations.
35. Neither any stipulated penalty nor any interest or penalties for late payments of a stipulated penalty shall be deducted or otherwise relied upon by Defendant for a tax benefit for federal, state or local tax purposes.

36. If Defendant fails to make timely payment of a stipulated penalty set forth in this Section VII, it shall be liable for interest and penalties for late payment. Such late penalty payment shall include: (a) interest at the percentage rate established by the Department of Treasury pursuant to 31 U.S.C. § 3717 (as of the due date), for any period after the due date; (b) a six percent per annum penalty charge assessed monthly on any portion of the penalty, including interest, which is more than ninety (90) days delinquent, and (c) administrative costs of collecting the penalty calculated in accordance with 40 C.F.R. § 13.11(b) and assessed monthly throughout the period the penalty is overdue.
37. Plaintiff may, in its sole unreviewable discretion, waive the assessment of any stipulated penalty applicable under this Section VII of this Consent Decree.

VIII. FORCE MAJEURE

38. If any event occurs which causes or may cause a delay in the achievement of compliance with any requirement of this Consent Decree, Defendant shall notify Plaintiff in writing within ten (10) days of when Defendant knew, or in the exercise of due diligence reasonably should have known, of the event. The notice shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Defendant to prevent or minimize the delay, and the timetable pursuant to which those measures shall be implemented and whether Defendant believes that the event which caused or may cause the delay constitutes a force majeure. Defendant shall adopt all reasonable measures to avoid or minimize any such delay.

39. Failure by Defendant to comply with the notice requirements of this Section shall constitute a waiver of Defendant's right to invoke the provisions of this force majeure Section as a basis for delay of performance under this Consent Decree.
40. For the purposes of this Consent Decree, a "force majeure" is defined as any unforeseen event arising from circumstances beyond the control of Defendant that could not have been prevented by due diligence and that delays or may delay the performance of any obligation under this Consent Decree. If the Plaintiff determines that the delay or anticipated delay in compliance with the Consent Decree has been or shall be caused by a force majeure, the time for performance hereunder shall be extended for a period no longer than the delay necessarily resulting from such circumstances. In such event, the parties shall stipulate to such extension of time. Neither unanticipated nor increased costs of achieving and maintaining compliance with any provision of this Consent Decree nor changed financial circumstances of Defendant shall be deemed a force majeure. Failure to obtain any necessary permit or approval shall not be deemed a force majeure.
41. If the Plaintiff determines that the delay was not or will not be caused by a force majeure, or if the parties are unable to agree on a stipulated extension of time, the Plaintiff's position shall control unless Defendant petitions the Court for relief pursuant to the dispute resolution procedures of Section IX of this Consent Decree. In submitting the matter to the Court, Defendant shall have the burden of proving that the delay was attributable to a force majeure event and that, as a result of the event, a particular extension period is appropriate.

42. Compliance with any requirement of this Consent Decree, by itself, shall not constitute compliance with any other requirement. An extension of one compliance date based on a particular incident shall not result in an extension of a subsequent compliance date or dates unless specifically agreed to by the Plaintiff. Defendant must make a separate showing of proof regarding each delayed incremental step or other requirement for which an extension is sought.

IX. DISPUTE RESOLUTION

43. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolution of disputes arising between Plaintiff and Defendant regarding matters arising under this Consent Decree. The parties shall make reasonable efforts to informally and in good faith resolve all disputes or differences of opinion regarding the meaning or implementation of this Consent Decree. In the event that the parties cannot resolve any such dispute, the interpretation advanced by the Plaintiff shall be considered binding unless Defendant invokes the dispute resolution provisions of this Section.
44. If, in the opinion of Defendant or in the opinion of the Plaintiff, there is a dispute between Defendant and the Plaintiff with respect to the meaning or implementation of this Consent Decree, the Defendant or the Plaintiff shall send a written Notice of Dispute to the other party which outlines the nature of the dispute and requests informal negotiations to resolve the dispute. Such period of informal negotiations shall not extend beyond twenty (20) days from the date when the Notice of Dispute was received unless the period is extended by written agreement of the parties to the dispute.

45. If informal negotiations fail to resolve the dispute, Plaintiff's position shall control unless Defendant invokes formal dispute resolution.
46. Formal dispute resolution for disputes arising under this Consent Decree shall be governed by this Section. Defendant shall invoke the formal dispute resolution procedures of this Section by filing with the Court a petition which shall describe the nature of the dispute and include a proposal for its resolution. Any such petition by Defendant must be filed no more than twenty-one (21) days after termination of informal negotiations. Following Plaintiff's response, Defendant shall have fourteen (14) days to file a reply to such response. Defendant shall bear the burden of proof in any dispute resolution proceeding under this Consent Decree. In any dispute among the parties, this Court shall uphold Plaintiff's action or decision unless this Court determines that Plaintiff's action or decision was arbitrary and capricious, an abuse of discretion or otherwise not in accordance with applicable law.
47. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of Defendant under this Consent Decree, unless the Plaintiff so agrees or the Court so orders. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment to the Plaintiff shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Decree. To the extent that Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VII (Stipulated Penalties).

X. GENERAL PROVISIONS

48. Nothing in this Consent Decree shall relieve Defendant of its obligation to comply with all applicable provisions of federal, state or local law, nor shall anything in this Consent Decree be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor shall it be construed to constitute EPA approval of the equipment or technology installed by Defendant in connection with the SEPs under the terms of this Consent Decree. After exercising due diligence and conducting appropriate inquiries, Defendant certifies that, to its knowledge, as of the date of lodging of this decree, the Facility is in compliance with the specific requirements of the CWA, RCRA, and CAA that are alleged in the complaint to have been violated, with the exception of the eighteen (18) stormwater discharges for which AK Steel has an application pending with PADEP seeking to incorporate these discharges into AK Steel's existing NPDES permit.
49. Access and Inspections. EPA and its employees, contractors and authorized representatives shall have access to the Facility and any other offices of Defendant which maintain records pertaining to Defendant's implementation of this Consent Decree at all reasonable times for the purpose of inspecting, monitoring and verifying compliance with the provisions of this Consent Decree, including the right to inspect, review and copy: (a) sample data and other records generated pursuant to the terms of this Consent Decree and (b) all documents or other information recording or describing work activity required by this Consent Decree. In all inspections carried out pursuant to this Section, such persons shall announce their presence and display their credentials to the Facility's environmental

contact or the manager of the office and shall notify Facility personnel when they anticipate making photographic or sound recordings. Defendant shall make the results of all sampling and/or tests or other data generated by Defendant, or on Defendant's behalf, with respect to the implementation of this Consent Decree, available to EPA upon request. All information and documents submitted by Defendant pursuant to this Consent Decree shall be subject to public inspection and release unless identified as confidential by Defendant in full conformity with 40 C.F.R. Part 2. Defendant shall substantiate such identification in accordance with 40 C.F.R. Part 2. Information and documents identified as confidential shall be disclosed only in accordance with 40 C.F.R. Part 2. Information concerning existing or potential contamination of the environment, actual or potential harm of such contamination, and/or hydrogeologic data, shall not be deemed confidential. Nothing in this Consent Decree in any way limits any right of entry or access available to EPA pursuant to applicable federal or state laws, regulations or permits.

50. Record Retention. Defendant shall preserve an original or a complete copy of all records, logs, and documents (including sampling data and analysis) created or received by Defendant which relate in any way to performance of the SEPs required by this Consent Decree. For all SEPs, records, logs and documents shall be retained for a minimum of five years from the date that the record, log, or document was created or received by Defendant. Upon retaining any agent, consultant or contractor for the purpose of performing the SEPs, Defendant shall require such agents, consultants or contractors to provide a copy to Defendant of all deliverables and supporting documents produced in

connection with the performance of activities required under this Consent Decree.

Nothing in this Consent Decree in any way limits Defendant's obligations under any federal or state law, regulation or permit to preserve any record, log or document for more than five (5) years from the date of creation or receipt by Defendant of such record, log or document.

51. Non-Waiver. The Plaintiff does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's complete compliance with this Consent Decree will constitute or result in compliance with the provisions of the CWA, RCRA, and/or CAA nor shall Plaintiff's approval of any submission made by Defendant under this Consent Decree constitute a warranty that implementation by Defendant of the approved submission will result in compliance with the provisions of the CWA, RCRA, and/or CAA. Except as expressly provided in Paragraph 53 of this Consent Decree (Covenant Not To Sue), the parties agree that compliance with this Consent Decree shall not be a defense to any actions commenced pursuant to such laws or regulations. Defendant shall be responsible for obtaining all federal, state and local permits which are necessary for the performance of any work hereunder.

52. Reservation of Rights. Except as expressly provided in Paragraph 53 of this Consent Decree (Covenant Not To Sue), the entry of this Consent Decree shall not limit or otherwise preclude the Plaintiff from taking criminal or additional civil judicial or administrative enforcement action against Defendant or any third parties with regard to the Facility pursuant to any federal or state law, including, but not limited to, the CWA, RCRA, and CAA, and any regulation or permit condition promulgated thereunder. This

Consent Decree is neither a permit nor a modification of any existing permit and shall not be interpreted to be such. This Consent Decree does not limit or affect the rights of Defendant or the Plaintiff, as against any third party, nor does it limit the rights of such third parties against Defendant. This Consent Decree shall not constitute an admission by Defendant of, or adjudication of, any issue of fact or law relating to the claims of the United States, with the exception of those relating to jurisdiction of the Court.

53. Covenant Not to Sue. Upon payment by Defendant of the civil penalty as provided in Paragraph 27 of this Consent Decree and provided that Defendant completes the SEPs set forth herein, the Plaintiff covenants not to take civil judicial or administrative action against Defendant seeking civil penalties pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b); Section 3008(a) of RCRA, 42 U.S.C. § 6928(a); and Section 113 of the CAA, 42 U.S.C. § 7413, for the violations alleged in the Complaint filed by the Plaintiff in this action. Provided, however, that nothing herein shall preclude the Plaintiff from taking any action necessary to prevent or abate any condition which presents an imminent and substantial endangerment to the public health or welfare, or the environment.

54. Costs. Except as provided for in Paragraph 57 below, the parties to this Consent Decree shall bear their own costs of litigation in this civil action, including, but not limited to, attorney and expert witness fees. This Consent Decree shall be considered an enforceable judgment for purposes of post-judgment collection in accordance with Federal Rule of Civil Procedure 69 and the Federal Debt Collection Procedures Act, 28

U.S.C. §§ 3001-3308. If Defendant fails to pay an amount that is owing to the United States pursuant to the requirements of this Decree within the time periods set forth in this Consent Decree, Defendant shall be liable and shall pay for attorneys fees and costs incurred by the United States to collect any such amount.

55. Modifications. No modifications shall be made to this Consent Decree without written agreement of all parties and written approval of the Court. Nothing in this Section shall be deemed to alter the Court's power to supervise or modify this Consent Decree.
56. Retention of Jurisdiction. The Court shall retain jurisdiction of this matter until termination of the Consent Decree. The Plaintiff retains the right to seek to enforce the terms of this Consent Decree and take any other action authorized by federal, state or local law to achieve or maintain compliance with this Consent Decree.
57. Indemnification. Defendant agrees to indemnify and save and hold harmless the United States, its agencies, departments, agents and employees, from any and all claims or causes of action arising from or on account of the acts or omissions of Defendant or its agents, representatives, employees, contractors, and subcontractors in carrying out the SEPs required by this Consent Decree.
58. Nothing herein shall be construed to limit in any way the authority of the United States to pursue criminal sanctions.
59. Entire Agreement. This Consent Decree, including the attached exhibits, represents the entire agreement among the parties. Attached hereto is Exhibit 1, which is the Scope of Work for Supplemental Environmental Projects. In case of a conflict between an attached exhibit and this Consent Decree, the Consent Decree shall govern. Prior drafts

of this Consent Decree shall not be used in any action involving the interpretation or enforcement of this Consent Decree.

XI. EFFECTIVE DATE AND TERMINATION

60. This Consent Decree shall be effective upon the date of its entry by the Court.
61. Once EPA has accepted each of Defendant's SEP Completion Reports for each of the SEPs, Defendant shall submit to the Plaintiff a letter signed by a responsible corporate official that certifies that Defendant has paid to Plaintiff any penalties required of it by the Consent Decree as of the date that it receives notice of EPA's acceptance of the final SEP Completion Report. After completing its review of Defendant's letter, the Plaintiff shall either (1) file a Notice of Completion with this Court stating that Defendant has complied with the requirements of this Consent Decree, and send copies of such Notice to Defendant; or (2) provide Defendant with a Notice of Deficiency that identifies any penalties that the United States has determined are owed by Defendant. If the Plaintiff issues a Notice of Deficiency, Defendant may invoke the dispute resolution procedures of Section IX of this Consent Decree.
62. The parties may at any time move jointly to terminate this Consent Decree based on their representation that all of its requirements have been satisfied.

XII. PUBLIC COMMENT

63. Final approval of this Consent Decree by the United States will be consistent with the public notice and comment requirements of 28 C.F.R. § 50.7. The United States may withdraw or withhold its consent if the public comments establish that entry of this Consent Decree would be inappropriate, improper or inadequate. After reviewing the public comments, if any, the United States shall advise the Court and Defendant by motion whether it seeks entry of this Consent Decree. Defendant agrees to the entry of this Consent Decree without further notice.

Judgment is hereby entered in accordance with the foregoing Consent Decree this

_____ day of _____ 2004.

SO ORDERED.

United States District Judge

FOR PLAINTIFF UNITED STATES OF AMERICA:

THOMAS L. SANSONETTI
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

Date: 11.4.04

CATHERINE BANERJEE ROJKO
Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044-7611

Date: October 18, 2004

MARY BETH BUCHANAN
United States Attorney
Western District of Pennsylvania

By:

Date: _____

ROBERT L. EBERHARDT
PA ID No. 10325
Assistant United States Attorney
U.S. Department of Justice
United States Attorney's Office
U.S. Post Office & Courthouse
700 Grant Street, Suite 400
Pittsburgh, PA 15219

1

THOMAS V. SKINNER
Acting Assistant Administrator for Enforcement
and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20004

Date: 11/30/04

6

DONALD S. WELSH
Regional Administrator, Region III
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103-2029

NOV 12 2004
Date: _____

WILLIAM C. EARLY
Regional Counsel, Region III
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103-2029

Date: 11/10/04

(

SAMANTHA P. FAIRCHILD
Director, Office of Enforcement, Compliance
and Environmental Justice
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103-2029

Date: 11/3/04

Date: 10/28/04

DANIEL L. ISALES
Senior Assistant Regional Counsel, Region III
Office of Enforcement, Compliance,
and Environmental Justice
U.S. Environmental Protection Agency
701 Mapes Road
Fort Meade, MD 20755-5350

FOR AK STEEL CORPORATION:✓

Date: 10/12/04

David C. Horn
Vice President, General Counsel
and Secretary

Date: 10/13/04

PAUL W. CASPER, JR., ESQ. ✓
Frost Brown Todd LLC
2200 PNC Center
201 E. Fifth Street
Cincinnati, OH 45202-4182

Exhibit 1

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA)	
)	
Plaintiff,)	
)	Civil Action No.
v.)	
)	
AK STEEL CORPORATION)	
)	
Defendant.)	

SCOPE OF WORK

I. PURPOSE

Consistent with and as provided in the May 1, 1998 "Final Supplemental Environmental Projects Policy," the three Supplemental Environmental Projects ("SEPs") described herein are *environmentally beneficial projects* which Defendant has agreed to undertake in settlement of the above-captioned enforcement action, but which Defendant is not otherwise legally required to perform.

II. BUSINESS CONFIDENTIALITY

Pursuant to 40 C.F.R. § 2.203, Defendant may submit a claim of confidentiality for any document or information submitted pursuant to this Scope of Work or under the attached Consent Decree. Failure to make a confidentiality claim, including the submission of a redacted copy of the document in question, at the time the document is submitted shall constitute a waiver of such claim. Defendant shall not assert a claim of confidentiality with respect to any sampling, monitoring or analytical data. Moreover, Defendant shall provide the Commonwealth of Pennsylvania's Department of Environmental Protection ("PADEP") a copy of this Consent Decree, including this Scope of Work, within three (3) days of Defendant's receipt of such agreement.

III. DESCRIPTION OF SUPPLEMENTAL ENVIRONMENTAL PROJECTS

A. REFRIGERANT CONVERSION SEP

1. SEP DESCRIPTION

Defendant shall purchase, install and maintain equipment to permanently convert a minimum of seventeen (17) refrigeration units from higher Ozone Depleting Potential (ODP) to lower ODP. A minimum of ten (10) of the units listed in the table below must be converted to utilize a refrigerant that is neither a Class I nor a Class II refrigerant. A minimum of five (5) of the units listed below must be converted to utilize a refrigerant that is either a Class II refrigerant or a refrigerant without an Ozone Depleting Potential. Defendant may take out of service up to a maximum of two (2) refrigeration units listed in the table below. All Class I and Class II refrigerant recovered from the seventeen (17) units will be inventoried and subsequently destroyed.

With the exception of the five (5) units which have the option of utilizing a Class II refrigerant, Defendant shall not reinstate the use of any Class I or Class II refrigerant in any of these units at any time.

2. PERFORMANCE STANDARDS

a. Time for performance

Defendant will initiate this refrigerant conversion SEP by January 1, 2005. Defendant will have completed refrigerant conversion for at least ten (10) of the units within twelve (12) months of initiation, at least fifteen (15) units within twenty (20) months of initiation, and will complete the project within twenty-four (24) months of initiation. The order in which the refrigeration units will be converted will be left to the discretion of the Defendant.

b. Units to be converted

For purposes of conversion, Defendant will select from the following units:

Unit Number	Unit Name	Pre-Conversion Refrigerant	Pre-Conversion Refrigerant Charge (lbs)
1	MS Degas Pulpit -	R-12	61
2	MS Stockhouse Melter's Pulpit	R-12	60
3	MS AOD Computer Room -	R-12	52
4	AOD Vessel Control Room	R-12	73
5	MS #3 Caster Control Room	R-12	60
6	Caster Control Room #3	R-12	60
7	Concast Maintenance Office	R-12	78
8	HSM Roughers Pulpit	R-12	61
9	HM Coiler Pulpit -	R-12	51
10	HM Heater's Pulpit	R-12	50
11	R-4 Crane	R-114	40
12	R-1 Crane	R-114	40
13	R-36 Crane	R-114	40
14	A-9 Crane	R-114	40
15	R-17 Crane	R-114	40
16	Silicon Breezewagon	R-12	250
17	MS #3 Caster Computer Room - Blue	R-22	60
18	MS #3 Caster Computer Room - Red	R-22	60
19	HSM Coiler Hydraulic PCR Room	R-22	60
20	Maintenance Administration Building	R-22	130

Defendant may elect to convert a refrigerant-containing device in lieu of a unit identified in table above provided:

1. Defendant provides a written justification in the quarterly report submitted to EPA prior to the quarter in which the conversion is to proceed and Defendant

receives prior written approval from EPA that the substitution is appropriate.

2. Defendant identifies the unit, pre-conversion refrigerant, pre-conversion refrigerant charge in pounds, post-conversion refrigerant, and post-conversion refrigerant charge in pounds.
3. Defendant provides a written certification that the proposed substitution unit is in compliance with all applicable provisions of 40 C.F.R. Part 82. Under no circumstances is the Defendant relieved of complying with the repair, retrofitting or retirement provisions of 40 C.F.R. Part 82.

Once the above units have been converted, Defendant will continue converting refrigerant from additional units at its Facility until it has expended the minimum amount of \$645,000, calculated in accordance with the Costs provisions set forth immediately below in Paragraph 3 (Costs). All Class I and Class II substances extracted from any unit at the Facility in performance of this SEP shall be inventoried and subsequently destroyed. In addition, Defendant will send for proper off-site destruction the approximately 1,400 pounds of recovered refrigerant currently stored at the Facility. Evidence of refrigerant destruction is to be provided by means of shipping and destruction records certified by Defendant and any third party used in this process.

3. COSTS

The costs for this SEP shall total no less than \$645,000.00. Costs for converting refrigeration units shall be calculated on the basis of giving 100% credit for every dollar spent on a unit in which a refrigerant that is neither a Class I nor a Class II substance is utilized following conversion and 80% credit (i.e., Defendant can claim credit for 0.80¢ for every dollar spent) for every dollar spent on a unit in which a Class II refrigerant is utilized following conversion.

4. PERIODIC REPORTS

Defendant shall submit to EPA quarterly status reports regarding its performance of this SEP. Such reports must be received by EPA no later than: April 30 (for the period starting December 1, 2004 through the first calendar quarter of 2005); July 30 (for second calendar quarter); October 30 (for third calendar quarter); and January 30 (for fourth calendar quarter). Such quarterly reports shall continue until Defendant submits a SEP Completion Report. Each status report shall contain the following information at a minimum:

- a) a narrative description of the work completed in the past calendar quarter and the actions taken by Defendant towards implementing the SEP, including, for each unit converted, a listing of the post-conversion refrigerant used and the total post-conversion refrigerant charge;

- b) a running total of expenditures to date as incurred by the Defendant and as valued under the Costs section above;
- c) a proposed schedule and description of all activities projected for the next quarterly reporting period, including any unit substitutions;
- d) a description of any problems and/or delays encountered or anticipated directly or indirectly resulting from implementation of the SEP; and
- e) a description of any actions taken to prevent or mitigate such problems and (if applicable) a proposed modified completion schedule.

B. NITROGEN OXIDES EMISSION REDUCTION CREDIT RETIREMENT SEP

1. SEP DESCRIPTION

Defendant will permanently retire 151.90 tons of nitrogen oxides emission reduction credits.

2. PERFORMANCE STANDARDS

Defendant will permanently retire the pending 151.90 tons of nitrogen oxides emission reduction credits (ERCs) that were generated from converting the nitric acid steel pickling process to hydrogen peroxide pickling at the Facility.

Within thirty (30) days from entry of this Consent Decree, Defendant will petition the Pennsylvania Department of Environmental Protection ("PADEP") to conduct its review and analysis of 151.90 tons of nitrogen oxides ERCs and indicate the intended use for the ERCs is for permanent retirement. Defendant will provide EPA with no less than three cost estimates provided by at least one brokerage firm and two other reputable sources, based on fair market value (moderate ozone non-attainment status in Pennsylvania), for the 151.90 tons of nitrogen oxides ERCs permanently retired. Such cost estimates shall be obtained within ninety (90) days of PADEP publishing in the Pennsylvania Bulletin notice of the registered ERCs. Defendant will submit a copy of the Pennsylvania Bulletin to EPA documenting the registry of the nitrogen oxides ERCs. Defendant will not utilize the registered ERCs for netting, internal offsetting, trading or any other purpose.

Defendant will provide EPA with a copy of all application documentation submitted to PADEP and received from PADEP within seven (7) days of submission or receipt.

3. COSTS

The fair market value (as determined by the average of the three cost estimates obtained by Defendant) of the nitrogen oxides ERCs that are retired by Defendant under this SEP shall be no less than \$225,000.

4. PERIODIC REPORTS

Defendant is not required to submit any periodic reports with respect to this SEP.

C. REFRIGERANT RECYCLING PROGRAM FOR BUTLER COUNTY SEP

1. SEP DESCRIPTION

Defendant will enter into a contract with a third party to implement a Refrigerant Recycling Program in Butler County, Pennsylvania. The Refrigerant Recycling Program shall establish a program where appliances containing refrigerants would be picked up and brought to a recycling plant, where the refrigerants would be properly removed from the appliances.

2. PERFORMANCE STANDARDS

Defendant shall provide to EPA and Butler County a copy of a draft scope of work and draft contract within sixty (60) days of entry of this Consent Decree for review and comment. Defendant's failure to properly revise the draft scope of work and draft contract in accordance with EPA's comments within thirty (30) days of receipt of such comments shall be considered a failure to perform the SEP by Defendant. Within sixty (60) days of receiving EPA approval, Defendant will enter into a contract with a third party to implement a Refrigerant Recycling Program in Butler County, Pennsylvania consistent with the draft scope of work and draft contract reviewed and approved by EPA. Thereafter, Defendant shall ensure that the third party will implement the program consistent with the draft scope of work and draft contract reviewed and approved by EPA.

3. COSTS

The total cost for this SEP is \$30,000.00.

4. PERIODIC REPORTS

Defendant shall submit to EPA quarterly status reports regarding their performance of this SEP. Such reports must be received by EPA no later than: April 30 (for first calendar quarter); July 30 (for second calendar quarter); October 30 (for third calendar quarter); and January 30 (for fourth calendar quarter). Such quarterly reports shall continue to be submitted until Defendant submits a SEP Completion Report for this SEP. Each status report shall contain

the following information at a minimum:

- a) a narrative description of the work completed in the past month or calendar quarter (as applicable) and the actions taken by Defendant towards implementing the SEP;
- b) a running total of expenditures to date as incurred by the Defendant and as valued under the Costs section above;
- c) a proposed schedule and description of all activities projected for the next quarterly reporting period;
- d) a description of any problems and/or delays encountered or anticipated directly or indirectly resulting from implementation of the SEP; and
- e) a description of any actions taken to prevent or mitigate such problems and (if applicable) a proposed modified completion schedule.